Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1996

JESUS MIRANDA,

Petitioner,

v.

CITY OF EL PASO, TEXAS; EL PASO POLICE DEPARTMENT; EL PASO COUNTY, and SHERIFF LEO SAMANIEGO, Individually and in his official capacity as the SHERIFF OF EL PASO COUNTY, TEXAS,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether this Court should reconsider its decision in *Baker v. McCollan*, 443 U.S. 137, 99 S.Ct. 2689, 61 L.Ed.2d 433 (1979).

2. Whether the court of appeals so far departed from the accepted and usual course of judicial proceedings by sanctioning the summary judgment entered by the trial court when there were clear issues of fact to be decided.

PARTIES TO THE PROCEEDING

All parties to the proceeding in the court whose judgment is sought to be reviewed are contained in the caption of the case before this Honorable Court.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jesus Miranda respectfully prays that a writ of certiorari issue to review the opinion and judgment entered by the U.S. Court of Appeals for the Fifth Circuit on April 28, 1997.

OPINION BELOW

The unpublished opinion of the U.S. Court of Appeals for the Fifth Circuit, styled *Jesus Miranda v. El Paso County, Texas; Leo Samaniego, Sheriff, Individually and in his official Capacity as the Sheriff of El Paso County, Texas*, No. 96-50012, 111 F.3d 893 (5th Cir. 1997), and the opinion on petition for rehearing (5th Cir. April 28, 1997) are attached to this petition in the Appendix. The District Court's opinion is also attached to the appendix.

JURISDICTION OF THE U.S. SUPREME COURT

The opinion and judgment of the U.S. Court of Appeals for the Fifth Circuit were entered on March 27, 1997, and Appellant's petition for rehearing was denied on April 28, 1997. This petition is filed within 90 days after the denial of a petition for rehearing. See SUP.CT.R. 13.3. This Court has jurisdiction to grant certiorari under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

This petition for review involves the deprivation of a young man's civil rights under Title 42 U.S.C. § 1983.

STATEMENT

In the early morning hours of May 3, 1992, Petitioner Jesus Miranda was arrested by El Paso Police Officers Arturo Ruiz and George Sibly on an arrest warrant for having an expired inspection sticker on his vehicle. (1 R. 96-98; 163.) The bond for this warrant was in the amount of $87.50. (1 R. 163.) Petitioner did not have the money to post bond so he was taken into custody. (1 R. 97.) While Petitioner Miranda was being booked into the County Jail, a booking clerk with the Sheriff's Department ran across what he believed to be another warrant against Miranda. (1 R. 97.) El Paso Police Officer James Price was told to go and pull the warrant. (1 R. 97.) Officer Price pulled the warrant, but noticed that there were discrepancies in the warrant and informed the booking clerk that he did not believe that Petitioner-Miranda was the individual wanted on the warrant, which was for two counts of delivery of heroin to a Police Officer. (1 R. 97-98; 166-167.) Officer Price also informed a supervisor, a Sergeant with the El Paso County Sheriff's Department, about the discrepancy. (1 R. 98.) The Sergeant asked to look at the warrant, asked a few questions, and handed the warrant back to Officer Price telling him that Petitioner-Miranda was the right guy, and instructing him to book Miranda on the warrant for the heroin charges. (1 R. 98-98.) Officer Price booked Petitioner-Miranda on the

heroin charges because he was following orders, and as Officer Price stated, "In this case, with the Sheriff's Department, they are in control of what goes on in the jail. So if there is a supervisor that instructs us to do something, technically they are the supervisor. They are in charge of the County Jail." (1 R. 99-101.)

When Miranda was told that he was being booked on two counts of delivery of heroin to a Police Officer, he tried to tell the Sheriff's Department Personnel that he was the wrong person, and was not the person wanted in the warrant. (1 R. 104-105.) In response to Miranda's protests that he was not the right person wanted in the warrant, Miranda was severely rebuked by the Sheriff's Department Sergeant. Petitioner was told as follows:

> "Don't play stupid with me. You have been here too many times to be playing this little game with me." (1 R. 105.)

Petitioner-Miranda continued to protest that he was the wrong person, and pleaded with the officer to go and look at the green card which was in his pick-up truck, which Miranda protested would clearly show that he was the wrong person. (1 R. 105.) The Sheriff's Department Sergeant's response to Miranda was as follows:

> No, I got the right person. Don't play games with me, little boy. I hear this all the time from little snot-nosed kids like you. Hold on one second. I'm going to check out some more things on you. He told me, they want you in Huntsville . . . You know. Like I told you. You think you are all innocent. You know what they want you in Huntsville for. You make one phone

> call. As soon as you get that phone call, you are going straight to Huntsville. (1 R. 105-106.)

The booking process continued, and Petitioner-Miranda continued to protest that he was not the right person wanted on the heroin charges. (1 R. 106-108.)

After Miranda was booked into the County Jail, and while awaiting cell designation, he again ran into the El Paso County Sheriff's Department Sergeant who had rebuked him earlier in the process. Petitioner-Miranda continued to protest that he was the wrong person. At this time an Hispanic officer came up and looked at the warrant and booking sheets regarding Petitioner-Miranda. This officer made a statement giving his opinion that Petitioner was the wrong person. (1 R. 109.) The Sheriff's Department Sergeant then told the officer "Shut up. You get over there." (1 R. 110.) The Hispanic officer then walked away. (1 R. 109-110.) The rebuke of Miranda continued, and Miranda's protest of being the wrong person continued to fall on deaf ears. (1 R. 110-111.) The Sheriff's Department Sergeant told Plaintiff as follows:

> You don't have any freedom. You are being stupid. You are the person we want. (1 R. 111.)

Petitioner was then booked into a cell.

Several hours later that morning, members of Miranda's family attempted to bond him out. The family was unable to bond him out because the bond was sent at $10,000.00 on the heroin charges, and $87.50 on the traffic warrant charges. (1 R. 29-30.) Miranda's family had enough money to bond Appellant out on the traffic warrant, but were not prepared to satisfy the high bond required on the heroin charges. Petitioner's family was

also unable to find a bonding company that was willing to post the bond with security the family was prepared to post. (1 R. 30.) In addition to trying to bond Miranda out of jail, within hours after he was arrested, Miranda's family also tried to convince people at the jail that they had arrested the wrong person. (1 R. 34-36.) People at the El Paso County Detention Facility responded to Miranda's mother and sister's attempts to point out the misidentification error by telling his family members not to play dumb, and that Miranda had been in jail on three (3) previous occasions. (1 R. 34-38.) In addition, Miranda's family was humiliated by El Paso County Detention Facility personnel when the jail personnel laughed in their faces, and treated them as though they were criminals. (1 R. 34-60.)

As set forth in an affidavit presented by former jail magistrate Scott Segall, inmates that had previously been booked into the El Paso County Detention Facility, the Detention Facility had records which were stored at the Facility's ID and R Division, which was located on the second floor of the facility. (1 R. 21-22.) These records contained a criminal history, photographs, fingerprints, and physical descriptions setting forth information such as eye color, hair color, tattoos, and scars. (1 R. 21-22.)

Information available at the El Paso County Detention Facility would have revealed that the Jesus Miranda wanted on the two heroin charges had been an inmate at the El Paso County Detention Facility on several previous occasions. (1 R. 146-153.) The information on file at ID & R included photographs, fingerprints, and other identifying information which included the fact that the individual wanted in the arrest warrant was a heroin addict, and

had numerous tattoos on his body. (1 R. 146-153.) The information on file at the El Paso County Detention Facility also revealed that Petitioner-Miranda was ten (10) years younger than the person wanted on the heroin charges. (1 R. 143-153.)

The testimony of Scott Segall, who was the Jail Magistrate at the El Paso County Detention Facility when the incident in question occurred, provided testimony that the means to make sure that the right person was being arrested was readily available at the jail facility, and would have taken no more than 5 minutes of time to access. (1 R. 22.) According to Jail Magistrate Segall, arrest warrants were frequently executed on the wrong person at the El Paso County Detention Facility. (1 R. 21-22.) This fact and recommendations to remedy the situation were brought to the attention of Sheriff Samaniego, the Sheriff of El Paso County Detention Facility. (1 R. 21-22; 63.) The Jail Magistrate's recommendations were ignored, and nothing was done to remedy the El Paso County Detention Facility's procedures to establish identity. (1 R. 21-22; 63.)

On the second night that Jesus Miranda was incarcerated at the El Paso County Detention Facility, he was repeatedly raped by 5 inmates. (1 R. 112-117.) Petitioner was assaulted to a degree which caused him to bleed from his anus. (1 R. 116.) Petitioner was finally released from custody at the El Paso County Detention Facility as per Judge Segall's instructions. (1 R. 157-159.)

Jesus Miranda filed suit in El Paso County, Texas, pursuant to Title 42 U.S.C. § 1983 alleging that his constitutional rights under the Fourth, Eighth, and Fourteenth

Amendments to the United States Constitution had been violated. (2 R. 393-404.) On December 4, 1995, the District Court granted Defendant's Motion for Summary Judgment. (1 R. 3-18.) Miranda filed a timely Notice of Appeal. (1 R. 1-2.) The summary judgment granted by the District Court was affirmed on other grounds by the Fifth Circuit Court of Appeals.

REASON FOR GRANTING THE WRIT

THIS COURT SHOULD GRANT THE WRIT BECAUSE THIS COURT SHOULD RECONSIDER ITS DECISION IN *BAKER V. McCOLLAN*, 443 U.S. 137, 61 L.Ed.2d 433, 99 S.Ct. 2689 (1979).

In granting summary judgment in favor of the County of El Paso, the District Court placed great reliance on the case of *Baker v. McCollan*, 443 U.S. 137 (1979) and its progeny. In *Baker*, an individual who had made a forgery of his brother's drivers license that was identical except for his own picture, was arrested pursuant to a warrant intended for his brother. The individual then sued claiming that he was falsely arrested and that his constitutional rights had been violated. This court ruled that no constitutional deprivation had occurred. However, Justice Blackmun, stated in his concurring opinion:

> I do not understand the Court's opinion to speak to the possibility that Rochin might be applied to this type of case or otherwise to foreclose the possibility that a prisoner in respondent's predicament might prove a due process violation by a Sheriff who deliberately and repeatedly refused to check the identity of a

> complaining prisoner against readily available mug shots and fingerprints. Such conduct would be far more "shocking than anything this petitioner has done."

Baker, at 443 U.S. 148. The facts in this case give rise to exactly the situation Justice Blackmun made reference to in the *Baker* opinion. The facts in this case clearly establish that personnel with the El Paso County Detention Facility arrested Petitioner-Miranda without probable cause to believe that he was the person wanted in the arrest warrant for the heroin charges, and that he was repeatedly raped by other inmates. The evidence demonstrated that Petitioner-Miranda had a different date of birth, a different address, and a completely different physical appearance from the person actually wanted in the heroin arrest warrant. In addition, whereas Petitioner had previously never been arrested, the person wanted in the warrant had a rap sheet several pages long.

Perhaps of more importance, and a fact not discussed anywhere in the trial court's opinion, El Paso Police Officer Price voiced his opinion that he did not believe Petitioner-Miranda was the individual wanted by the heroin warrant. (1 R. 97-98.) In addition, Miranda was also vigorously protesting that he was not the person wanted by the heroin warrant. (1 R. 104-105.) When Miranda was arrested on the heroin charge, there was no probable cause to believe that he was the person wanted in the warrant. If anything, probable cause existed for the proposition that Miranda was not the person wanted in the arrest warrant. Instead of conducting an investigation into the matter, an investigation which would have taken no more than 5 minutes according to County Detention

Jail Magistrate Segall (1 R. 21-22.), the Sergeant in charge conducted no investigation and ordered Miranda to be arrested on the heroin charges. Then, acting pursuant to the Sergeant's orders, Officer Price booked Miranda on the heroin charges. (1 R. 98-100.)

Had the Sergeant at the County Detention Facility taken the 5 minutes necessary to conduct a check, he would have discovered that Miranda and the person actually wanted in the warrant had completely different physical descriptions. The pictures clearly would have shown that they were different people, as would have the physical description of the wanted person which showed him to have numerous tattoos, and needle marks. Petitioner-Miranda did not have single tattoo or needle mark. Even a cursory review of the records would have demonstrated that he was not the person wanted on the heroin charges, and his arrest on those charges was conducted without probable cause.

The County Detention Sergeant's failure to investigate the possibility of a mistaken arrest was further compounded by the fact that a second law enforcement officer also called into question the misidentification of Petitioner-Miranda. As the Summary Judgment evidence demonstrates, an Hispanic officer with the County Detention Facility tried to point out that Plaintiff-Miranda was the wrong person. Instead of listening to this officer, the Sergeant continued with his rebuke of Petitioner and continued the incarceration process.

This case demonstrates that identifying information was readily available to El Paso County Detention Officers, and an investigation of such materials would have

taken no more than 5 minutes. Additionally, as stated in Justice Segall's affidavit, the County was frequently executing warrants on the wrong people, and requests to the Sheriff to alleviate the situation were completely ignored. (1 R. 21-22.)

It is inconceivable that Petitioner's constitutional rights were not violated when he was falsely arrested and subsequently raped while in custody. This case presents a situation of "a Sheriff who deliberately and repeatedly refused to check the identity of a complaining prisoner against readily available mug shots and fingerprints," and presents a scenario far worse than any envisioned by Justice Blackmun. Because this case presents facts that shock the conscience and should be a violation of law in any civilized society, the opinion in *Baker v. McCollan* should be reconsidered and some sort of bright line should be drawn to give guidance to what is a constitutional violation and what is not when a person is falsely arrested.

THIS COURT SHOULD GRANT THE WRIT BECAUSE THE COURT OF APPEALS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY SANCTIONING THE SUMMARY JUDGMENT ENTERED BY THE TRIAL COURT WHEN THERE WERE CLEAR ISSUES OF FACT TO BE DECIDED

The Fifth Circuit Court of Appeals affirmed the Summary Judgment granted by the trial court. *Miranda v. City of El Paso, et al.*, No. 96-50012, 111 F.3d 893 (5th Cir. 1997). In its opinion, the court used new grounds to support the lower court's granting of Summary Judgment. The Fifth

Circuit opined that there was insufficient evidence to support a finding that a custom or practice of the county caused the alleged constitutional violation. This finding by the Court of Appeals grossly departed from the accepted and usual course of judicial proceedings.

Summary Judgment is proper only if the movant demonstrates that there is an absence of genuine issues of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). Once a movant produces such evidence, the non-movant must then direct the Court's attention to evidence in the records sufficient to establish that there is a genuine issue of material fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). All reasonable inferences which can be drawn from the facts must be construed to support Petitioner-Miranda's theory of the case, and any genuine dispute of facts must be resolved, for the purposes of the Summary Judgment Motion, in Petitioner-Miranda's favor. *International Shortstop, Inc. v. Rally's*, 939 F.2d 1257, 1263 (5th Cir. 1991). Petitioner understands that the standard of review is not merely whether there is a sufficient factual dispute to permit the case to go forward, but whether a rational trier of fact could find for the non-moving party based upon the record evidence before the court.

From the evidence presented it is clear that the El Paso County Detention Facility did not have an established custom or practice to verify that arrest warrants were being properly executed, and that this practice or policy was the proximate cause of Petitioner being arrested without probable cause. This assertion is supported by the Summary Judgment evidence presented by

Defendant. Defendants argued that the El Paso County Detention Facility's prisoner processing procedures (2R. 226-233) provided sufficient protection to ensure that the proper person listed in an arrest warrant was the actual person being arrested. (Appellee's Brief, p. 13-14.) However, a review of the prisoner processing procedures relied upon by the County (2R. 226-233, See Appendix), reveals that there is not a single provision listed in these procedures which mandates that checks be made to make sure that the person being arrested on a warrant is the right person. (These procedures are appended to this Petition in the Appendix.) The County's booking procedures fail to mandate that the identity of the person being arrested should be verified with that of the person listed in an arrest warrant, and fails to direct the detention personnel about what they should do when there is an uncertainty regarding whether the right person is being arrested. (2R. 226-233.) In reality, the county's processing procedures pertain to making sure the booking paperwork is done properly rather than making sure the right person is arrested. Indeed, the Prisoner Processing Procedures mandate that when the arrest documentation does not match the information on the arrest card, that the arresting officer will correct any discrepancies noted. (2R. 227-228.) In other words, when there are discrepancies, make sure to correct the form so that the discrepancy does not appear!

The County of El Paso did have a directive order (No. 91-34), which directed sheriff's deputies to take steps to verify identification. (2R. 234-236.) However, it is clear that this directive does not apply to personnel in the El Paso County Detention Facility. As stated by El Paso

County Sheriff Leo Samaniego in his affidavit, "Upon further review, it is evident that this directive (91-34) applies only to sheriff's deputies effecting an arrest pursuant to a warrant and was not intended to apply to personnel within the detention facility." (1R. 49.)

Thus, when the evidence presented by the County of El Paso to demonstrate a Detention Facility custom or practice to protect people from being wrongfully arrested is reviewed, it is evident that the County of El Paso had no real substantive policy to direct personnel at the El Paso County Detention Facility to check and ensure that a person being arrested on a warrant was the right person. This lack of such a policy for the detention facility created an obvious risk that pretrial detainees might be arrested on warrants belonging to other people. This is especially true in a community like El Paso where many Hispanics have the same last name.

This Court has stated that a failure to adopt a policy can be deliberately indifferent when it is obvious that the likely consequences of not adopting a policy will be a deprivation of constitutional rights. *City of Canton, Ohio v. Harris*, 489 U.S. 378-390, 109 S.Ct. 1205, 103 L.Ed.2d 412 (1989). In a community like El Paso County, where many Hispanics have the same last name, the lack of a procedure to verify identity created an obvious risk that pretrial detainees might be arrested on warrants belonging to other people.

It is also well established that while a municipal policy maker's failure to adopt a precaution can be the basis for § 1983 liability, such omission must amount to

an intentional choice, not merely an unintentional negligent oversight. *City of Canton*, 489 U.S. at 387, 109 S.Ct. at 1204; *Rhyne v. Henderson County*, 973 F.2d 386, 392 (5th Cir. 1992); *Manarite v. City of Springfield*, 957 F.2d 953, 959 (1st Cir. 1992). In this case, Petitioner presented evidence demonstrating that the jail magistrate at the El Paso County Detention Facility had first hand knowledge that many persons arrested and booked into jail at the Detention Facility were not the person named in the arrest warrant. (1R. 63; 1R. 21-22.) Additionally, Judge Segall indicated that where the history of the person being booked into the jail and the history of the wanted person did not match, that nothing would be done. (1R. 63.) As Judge Segall's affidavits indicate, he constantly called the detention facility's problem of wrongful arrests to the attention of El Paso County Sheriff Leo Samaniego. (1R. 63; 1R. 21-22.) Judge Segall also recommended to the sheriff that the detention facility should (1) get on line with the Albuquerque computer for fingerprint checks; (2) cooperate with the El Paso Police Department in checking fingerprints; (3) do their own fingerprint checks; and, (4) that prior booking cards be tied to current booking cards when a person was re-booked. (1R. 63.) Despite the Judge's pleas to the Sheriff for some sort of remedial action, Sheriff Samaniego did not take any corrective action. The Sheriff's lack of action in the face of these pleas was an intentional choice, not merely an unintentional negligent oversight. Because it has long been recognized that, in Texas, the county sheriff is the county's final policy maker in the area of law enforcement, *Turner v. Upton County*, 915 F.2d 133, 136 (5th Cir. 1990), Sheriff Samaniego's failure to take corrective action

reflected the custom and practice of the County of El Paso, and this policy caused the violation of Petitioner's Fourth Amendment right to be arrested only upon probable cause.

There is absolutely no doubt that the record in this case contained more than enough evidence regarding custom and practice to defeat summary judgment. To deny Petitioner the right to have a jury trial on the basis set forth by the Fifth Circuit Court of Appeals shocks the conscience and represents a gross departure from the accepted and usual course of judicial proceedings. For this reason, this court should grant a *writ of certiorari.*

CONCLUSION

FOR THESE REASONS, Petitioner Miranda respectfully prays this Honorable Court will issue a *writ of certiorari* and review the opinion below.

Respectfully submitted,

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DATED: July 25, 1997.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-50012
Summary Calendar

JESUS MIRANDA; MARIA MIRANDA; SYLVIA DELGADO,

Plaintiffs,

JESUS MIRANDA

Plaintiff-Appellant,

versus

CITY OF EL PASO, TEXAS, ET AL.,

Defendants,

EL PASO COUNTY, TEXAS ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-94-CV-163

(Filed Mar. 27, 1997)

Before DAVIS, EMILIO M. GARZA and STEWART, Circuit Judges.

PER CURIAM:*

Jesus Miranda appeals from the district court's grant of a motion for summary judgment in favor of the defendants in his civil rights suit under 42 U.S.C. § 1983. Miranda argues that the district court erred in granting the defendants' motion for summary judgment because a factual dispute exists with respect to whether his arrest for the drug offenses was supported by probable cause.

Miranda failed to present evidence sufficient to establish the existence of a genuine issue of material fact demonstrating a policy or custom which caused the purported constitutional violation. *See Colle v. Brazos County, Tex.*, 981 F.2d 237, 244 (5th Cir. 1993). The judgment of the district court is AFFIRMED.

AFFIRMED.

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* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

JESUS MIRANDA, MARIA MIRANDA, and SYLVIA DELGADO, Plaintiffs, v. CITY OF EL PASO, TX; EL PASO POLICE DEPARTMENT; EL PASO COUNTY, TX; and LEO SAMANIEGO, Individually and in his official capacity as the SHERIFF of EL PASO COUNTY, TX, Defendants.	§ § § § § § § § § § § § § § §	EP-94-CA-163-F (Filed Dec. 4, 1995)

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

On this day, the Court considered the Motion for Summary Judgment filed by the Defendants, City of El Paso, TX, El Paso Police Department, El Paso County, TX and Sheriff Leo Samaniego.

I. FACTS

In the early morning of May 3, 1992, two El Paso police officers were conducting surveillance of a suspected transvestite prostitute in the downtown area of El Paso. They observed Plaintiff, Jesus Miranda, drive towards the place where the prostitute was standing and come to a stop. The officers then observed the prostitute

open the passenger side door and get into Plaintiff's truck.

After pursuing the truck into an alley, the officers approached the vehicle and found the prostitute and Plaintiff partially undressed in the bed of the truck. The officers asked both individuals to exit the truck. Plaintiff could not produce any identification, but gave his name, date of birth and address. A subsequent warrant check indicated that Plaintiff had an outstanding traffic warrant for $87.50. When Plaintiff indicated to the officers that he could not post a bond, he was arrested.

Sometime before Plaintiff was booked into the El Paso County Detention Facility at approximately 8:15 a.m. that morning, a sealed indictment for two counts of delivery of heroin was also discovered for an individual with the name Jesus Miranda. Plaintiff was then charged with this offense also. The Jesus Miranda referred to in the sealed indictment was ten years older than Plaintiff, lived at a different address and had a different driver's license number. Plaintiff repeatedly told the officers that they had mistaken his identity and asked them to further investigate. In addition, Plaintiff's mother, Maria Miranda, and his sister, Sylvia Delgado, went to the jail and pleaded with the officers that they had arrested the wrong person. The officers allegedly rebuked Plaintiff and rudely told his mother and sister that they should not act ignorant. The bond on the heroin charge was set at $10,000.

Plaintiff could not make bond on this charge either. As a result, he was placed on a floor of the detention center allegedly reserved for detainees with prior

records. Plaintiff alleges that during the time he was held on this floor, he was sexually assaulted a number of times by other inmates. Plaintiff filed a complaint with the City of El Paso shortly thereafter, alleging a false arrest claim for being charged with heroin delivery. Plaintiff, though, did not notify officers at the Detention Facility nor City or County officials of the sexual assault until two years after the incident occurred.

The next day, May 4, 1992, the police discovered that Plaintiff was not the Jesus Miranda named in the sealed indictment. The heroin charge against Plaintiff was then dismissed. Later that day, Plaintiff pled guilty to the traffic offense. He was sentenced to time served and released at approximately 5:30 p.m.

II. PROCEDURAL HISTORY

Plaintiffs initially filed suit in Texas State court on April 29, 1994, alleging a violation of Plaintiff Jesus Miranda's Fourth Amendment Rights by all Defendants, a violation of Plaintiff Jesus Miranda's Eighth Amendment Rights by Defendants El Paso County and Sheriff Samaniego, negligent implementation of policy by all Defendants, and intentional infliction of emotional distress by El Paso County as to all three Plaintiffs. In addition to the current defendants to this suit, Plaintiffs also charged Arturo Ruiz and George Sibley, the two arresting officers, with libel, slander, false arrest and false imprisonment.

Defendants successfully petitioned for removal in May 1994. Plaintiffs then moved for dismissal of all charges against Defendants Ruiz and Sibley and this was

granted October 24, 1994. The newly constituted group of Defendants filed for Summary Judgment on July 27, 1995.

Immediately before this motion was argued, the City of El Paso and the El Paso Police Department announced to the Court that they had settled with Plaintiffs. The only remaining Defendants in this suit are the County of El Paso and Sheriff Leo Samaniego.

III. STANDARD FOR SUMMARY JUDGMENT REVIEW

Summary judgment, "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c); *see Hansen v. Continental Ins. Co.*, 940 F.2d 971, 975 (5th Cir. 1991); *Hogue v. Royse City*, 939 F.2d 1249, 1252 (5th Cir. 1991). "Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure that just, speedy and inexpensive determination of every action.' " *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) (quoting FED. R. CIV. P. 1).

"All facts contained in the pleadings, depositions, admissions, and answers to interrogatories are reviewed by 'drawing all inferences most favorable to the party opposing the motion.' " *James v. Sadler*, 909 F.2d 834, 836 (5th Cir. 1990) (quoting *Reid v. State Farm Mut. Auto Ins. Co.*, 784 F.2d 577, 578 (5th Cir. 1986)). However,

> "[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial."

Duplantis v. Shell Offshore, Inc., 948 F.2d 187, 190-91 (5th Cir. 1991) (quoting FED. R. CIV. P. 56(e)).

Accordingly, the focus of this Court is upon disputes over material facts; that is, only facts likely to affect the outcome of the lawsuit under the governing substantive law will preclude summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986); *Phillips Oil Co. v. OKC Corp.*, 812 F.2d 265, 272 (5th Cir.), *cert. denied*, 484 U.S. 851 (1987). The Fifth Circuit has stated, "[t]he standard of review is not merely whether there is a sufficient factual dispute to permit the case to go forward, but whether a rational trier of fact could find for the nonmoving party based upon the record evidence before the court." *James*, 909 F.2d at 837.

IV. ANALYSIS

A. Fourth and Fourteenth Amendment Claims

Plaintiff must assert a recognized liberty or property interest that has been recklessly or intentionally deprived from him in order to state a cause of action under § 1983. *Sanders v. English*, 950 F.2d 1152, 1159 (5th Cir. 1992). There is a federally protected right to be free from an unlawful arrest and detention which results in a significant restraint of liberty. *Duckett v. City of Cedar Park*, 950 F.2d 272, 278 (5th Cir. 1992). An unlawful or false arrest

occurs when the arresting officer does not have probable cause to make the arrest. *Thomas v. Kippermann*, 846 F.2d 1009, 1011 (5th Cir. 1988).

When an individual has been arrested on more than one charge, a police officer does not need probable cause for each charge to make a valid arrest. *Trejo v. Perez*, 693 F.2d 482, 485-86 (5th Cir. 1982). If probable cause exists for a charge and an arrest is made pursuant to that charge, then the arrest is valid as a matter of law. *Bodzin v. City of Dallas*, 768 F.2d 722, 726 (5th Cir. 1985). A valid arrest serves as a complete defense to a § 1983 claim. *Id.*

Plaintiff Miranda claims that his arrest for the heroin delivery charge constituted a false arrest for which there was no probable cause. Allegedly, the officers deliberately arrested Plaintiff for a crime they knew he did not commit. Plaintiff maintains that had he not been charged with heroin delivery, he would not have been classified and jailed with the dangerous criminals in the jail. In addition, he would have posted bond for the traffic offense and been entitled to release.

Further, Plaintiffs have offered the affidavit of Scott Segal who states that while he was El Paso County Jail Magistrate, there were "many persons who were arrested and booked into the jail who were not the person named in the warrant." Segal made several recommendations to Defendant Samaniego to change the identification procedure, none of which were accepted.

The case law on this subject addresses the situation where 1) probable cause does not exist for a specific charge or 2) probable cause does not exist for one charge, but does exist on a related charge. *Trejo*, 693 F.2d at 485;

United States v. Atkinson, 450 F.2d 835, 838 (5th Cir. 1971), *cert. denied*, 406 U.S. 923 (1972). It is settled in the Fifth Circuit that "when a crime under which an arrest is made and a crime for which probable cause exists are in some fashion related, then there is no question but that there is a valid arrest." *Atkinson*, 450 F.2d at 838.

In truth, though, the question of whether there was probable cause to arrest Miranda for the heroin delivery charge is moot. *Bodzin*, 768 F.2d at 726. The police already had probable cause to arrest him for the outstanding traffic warrant and, in fact, did arrested [sic] him for that outstanding traffic warrant. While the traffic and heroin delivery charges were not related, it was not necessary in this case that they be related. In *Trejo v. Perez*, probable cause existed, but not for the crime for which the plaintiff was originally arrested. 693 F.2d at 485-86. The police needed to rely upon a second charge for the arrest, pursuant to the first charge, to be valid. Unlike the plaintiff in *Trejo*, however, Miranda was arrested for a crime for which probable cause existed and to which he subsequently pleaded guilty.

Thus, Plaintiffs' complaint is more appropriately characterized as a complaint against being detained for an unreasonable amount of time pursuant to a valid warrant for failure to pay a routine traffic violation. The Court has not found, nor have Plaintiffs cited, any authority which suggests such a Constitutional violation given the circumstances of this case. Plaintiffs' complaint also suggests that a possible Constitutional violation occurred because he was classified as, and housed with, dangerous criminals. The Court has not found, nor have

Plaintiffs cited, any authority which identifies this as a recognized liberty interest.

Even if the police arrested Plaintiff Miranda solely on the heroin delivery charge, Plaintiff cannot maintain a cause of action on Constitutional grounds. The Fourth and Fourteenth Amendment do not guarantee that only guilty persons will be arrested. *Baker v. McCollan*, 443 U.S. 137, 145 (1979). Thus, if the officers had probable cause to arrest Plaintiff on the heroin charge, even though they were mistaken, Plaintiff's Fourth Amendment rights have not been violated. *Bodzi* 768 F.2d at 726.

An individual's Constitutional rights are not violated simply because police officers charge him with a crime actually committed by another person with the same name. *Brown v. Patterson*, 823 F.2d 167, 168-69 (7th Cir.), *cert. denied*, 484 U.S. 855 (1987). Plaintiff Miranda claims that the difference with his address, license plate number and physical description as compared with the individual named in the sealed indictment should have alerted Defendants that he [sic] not the person named in the indictment. Miranda's failure to produce any identification for the officers at the time of his arrest, however, arguably increased Defendants' suspicion as to his true identity. Moreover, all three Plaintiffs' efforts to convince police officials that a mistake had been made could be expected even if Plaintiff Miranda was, in fact, the person named in the indictment. Though differences between the two individuals existed, they were not so notable as to remove all grounds for probable cause.

Finally, where Miranda was held for approximately 36 hours pursuant to both an outstanding traffic warrant

and two counts of heroin delivery, other plaintiffs have been held for longer periods of time solely on the basis of a valid, but mistakenly executed warrant and have still been denied recovery. *Baker,* 443 U.S. at 141 (plaintiff mistakenly held for three days denied recovery); *Brown,* 823 F.2d 167, 168-69 (7th Cir. 1987) (plaintiff mistakenly held for 48 hours denied recovery even though he was not fingerprinted nor was any additional effort taken by the police to establish his identity).

Because the police had probable cause to arrest Plaintiff Miranda for the traffic violation, the arrest was valid. Even if there had been no traffic violation, the officers still had probable cause to arrest Miranda for heroin delivery. Miranda's § 1983 claims cannot be sustained. Therefore, Defendants' Motion for Summary Judgment as to Plaintiff's Fourth and Fourteenth Amendment claims is granted.

B. Eighth and Fourteenth Amendment Claims

The Eighth Amendment, which applies to the states through the due process clause of the Fourteenth Amendment, prohibits the infliction of cruel and unusual punishment on those convicted of crimes. In addition to placing restraints on prison officials in their treatment of prisoners, the Eighth Amendment also imposes a duty on these officials to "take reasonable measures to guarantee the safety of the inmates." *Farmer v. Brennan,* ___ U.S. ___, ___, 114 S. Ct. 1970, 1976 (1994) (quoting *Hudson v. Palmer,* 468 U.S. 517, 526-527 (1984)). This includes protecting an inmate the [sic] from conditions within the prison, namely the violent acts of other inmates. *Alberti v.*

Klevenagen, 790 F.2d 1220, 1224 (5th Cir.), *reh'g denied*, 799 F.2d 992 (5th Cir. 1986).

Plaintiff must satisfy two requirements to establish an Eighth Amendment violation when alleging an injury caused by the act of another inmate. First, an act or omission by prison officials resulted in the denial of "the minimal civilized measure of life's necessities." *Farmer*, 114 S. Ct. at 1977 (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). Plaintiff Miranda alleges that while incarcerated on the fourth floor of the El Paso Detention Facility he was sexually assaulted. Without question, this assault, if it did occur, was a brutally offensive act which served no penological purpose. For purposes of this motion, the Court assumes the events alleged by Plaintiff did occur.

Second, Plaintiff must show that the prison officials exhibited "deliberate indifference" to his health or safety. *Wilson v. Seiter*, 501 U.S. 294, 303 (1991). As recently articulated by the Supreme Court, deliberate indifference describes a state of mind "more blameworthy than negligence." *Farmer*, 114 S. Ct. at 1978. Further, prison officials must have been "aware of facts from which the inference could be drawn that a substantial risk of serious harm existed, and [they] must also [have] draw[n] the inference." *Id.* at 1979. This is a subjective, not an objective test. *Id.* Regardless of whether or not the officials should have recognized a substantial risk, if the officials did not recognize that risk then no "punishment" within the meaning of the Eighth Amendment has been inflicted upon the plaintiff. *Id.*

Plaintiffs claim that El Paso County Prison Officials knew or should have known about inmates who were raped and beaten up in the El Paso County Jail.[1] Their original petition states that "inmates at the El Paso County Jail are assaulted by other prisoners with such frequency that the county has reasonably been appraised of the existence of the threats to inmate safety." To support this claim, Plaintiffs rely exclusively upon the affidavit of former El Paso County Jail Magistrate Scott Segal. Segal stated that during his tenure he received occasional reports of people being beaten up and raped while in jail and that he reported this to Defendant Samaniego.

This evidence does not satisfy the second requirement of Plaintiff Miranda's Eighth Amendment claim. The Federal Rules of Civil Procedure require that affidavits filed in support of a non-movant's response to a motion for summary judgment be made on personal knowledge and set forth facts which would be admissible in evidence. FED. R. CIV. P. 56(e). By contrast, Segal's affidavit asserts facts of which he has no personal knowledge. His statement that he received reports of violence in the jail is heresay which would not be admissible at trial. *Williamson v. U.S. Dept. of Agriculture*, 815 F.2d 368, 383 (5th Cir. 1987); Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d Sec. 2738. Thus, Plaintiffs

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[1] Plaintiff acknowledges that the City of El Paso and the El Paso Police Department were not the jailers in this case and cannot be found guilty of violating Plaintiff's Eighth Amendment rights. Since these Defendants have settled, the issue is moot as to them.

have not provided the Court with competent evidence that officials at the El Paso Detention Facility could have known, much less knew, of a substantial risk of sexual assault to the prisoners generally.

Moreover, he has not provided evidence that the officials were cognizant of any specific sexual assaults against him. Indeed, Plaintiff Miranda did not make known to city or county officials that he was raped until two years after the alleged rape took place. Prison officials were not informed by the Plaintiff after he was first assaulted that an assault had occurred. Thus, they had no notice of a substantial risk to Miranda at any time during his brief incarceration.

Because the prison officials were not aware of any substantial risk of serious harm faced by Miranda, they were not deliberately indifferent to Miranda's health and safety. Therefore, Defendants' Motion for Summary Judgment as to Plaintiff's Eighth and Fourteenth Amendment claims is granted. For this reason, the Court does not need to reach the question of whether prison officials took reasonable measures to minimize this risk.

C. Texas Tort Claims Act

To bring suit against any governmental entity of the State of Texas, Plaintiffs must provide notice of their claim within six month [sic] after the day the incident giving rise to the claim occurred. TEX. CIV. PRAC. & REM. CODE Sec. 101.101. Plaintiffs filed a complaint with the City of El Paso and for purposes of this motion, the Court assumes that this gave the County notice as well, even

though the City was the entity which performed the investigation.

Plaintiffs complaint to the City, however, made no mention of any sexual assault on or rape of Plaintiff Miranda. The complaint only discussed the false arrest claim. Because Plaintiff must notify Defendant as to the nature of the incident and did not do so with regard to the sexual assault, he cannot recover any damages from Defendants for the assault. TEX. CIV. PRAC. & REM. CODE Sec. 101.101.

In effect, Plaintiff has alleged a tort claim against Defendants for false arrest. Any tort claim must include allegations that personal injury was caused by use of tangible personal or real property. TEX. CIV. PRAC. & REM. CODE Sec. 101.021. Allegations in a case of false arrest that particular injuries were caused by use of tangible personal or real property are without merit. *Soto v. City of Laredo,* 764 F. Supp 448, 453 (S.D. Tex. 1991).

D. Intentional Infliction of Emotional Distress

Plaintiffs initially claimed that El Paso County Prison Officials rebuked Jesus Miranda when he tried to tell them that they had arrested the wrong person. Further, these officers rudely told his mother and sister that they should not act ignorant when the two women went to the jail and pleaded with the officers that the wrong person had been arrested. Plaintiffs allege that they each suffered emotional distress damages as a result of these actions.

Defendants argued that Plaintiffs cannot hold the County liable for the torts of an agent of the County

because immunity has not been waived for any intentional torts. *Lowe v. Texas Tech Univ.*, 540 S.W.2d 297, 298 (Tex. 1976). In the alternative, they argue that Plaintiffs have failed to meet the elements to establish a claim of Intentional Infliction of Emotional Distress.

In their Opposition to Defendants' Motion for Summary Judgment, Plaintiffs acknowledge that "summary judgment is appropriate as to the intentional infliction of emotional distress claim."

V. CONCLUSION

For the aforementioned reasons, the Court is of the opinion that Defendants' Motion for Summary Judgment is hereby GRANTED in its entirety.

Therefore, it is ORDERED that all claims against Defendants El Paso County and Sheriff Leo Samaniego are DISMISSED WITH PREJUDICE.

SIGNED this 30th day of November, 1995.

/s/ Royal Furgeson
ROYAL FURGESON
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-50012

JESUS MIRANDA; MARIA MIRANDA; SYLVIA DELGADO

Plaintiffs

JESUS MIRANDA

Plaintiff - Appellant

v.

CITY OF EL PASO, TEXAS, ET AL

Defendants

EL PASO COUNTY, TEXAS; LEO SAMANIEGO, Sheriff, Individually and in his official Capacity as the Sheriff of El Paso County, Texas

Defendants - Appellees

Appeal from the United States District Court for the Western District of Texas, El Paso

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ON PETITION FOR REHEARING

(Filed Apr. 26, 1997)

Before DAVIS, EMILIO M. GARZA and STEWART, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above case is denied.

ENTERED FOR THE COURT:

/s/ W. Eugene Davis
United States Circuit Judge

EXHIBIT 8

* * *

3. Arresting officers or Booking section personnel may request a strip search of a prisoner if reasonable suspicion exists that the prisoner has narcotics, weapons or contraband in their possession. Male prisoners will be strip searched by male officers in the presence of the arresting officer (IF A MALE OFFICER). Female prisoners will only be stripped searched by FEMALE booking officers or arresting officers. In no case will a cavity search be conducted unless made by the medical staff. The determination to conduct a strip search will be made by the Booking Floor Control Officer (Corporal) or Sergeant on duty who should be present during the search (except in cases of strip search of prisoners of the opposite sex).

4. The Search Officer will note the physical condition of the prisoner and check the arrest card for any injury or illnesses that may be evident to insure it has been noted. Any visible injuries or medical complaints voiced by the prisoner which do not require medical attention should be noted on the arrest card. If a prisoner appears to require medical attention, the LVN on duty will be summoned to examine the prisoner. The LVN's decision to accept or refuse the prisoner will be binding and final, unless the prisoner has been taken to a hospital and a "Refusal to Accept Treatment" Form is available.

5. Prisoners who are unconscious will not be accepted. Prisoners who are apt to become unconscious will be considered as needing medical attention. Pregnant prisoners in their last trimester of their pregnancy will be checked by the LVN on duty before they will be accepted. If a prisoner is to be seen by the LVN on

duty, the arresting officer will not be released until the prisoner is deemed acceptable.

STEP 3 – Arrest Documentation & Prisoner In-Take

1. The Records Officer will assign a booking number to the prisoner. A Polaroid identification photo (4 images) will be taken of the prisoner. The assigned booking number will be affixed to the arrest card, arrest instrument and to the back of the Polaroid photo of the prisoner and forwarded to the Booking Section.

2. As the Records Officer is processing the prisoner, the Booking Section In-Take Officer (Desk Driver) will meet with the arresting officer and check the accuracy and completeness of the arrest card and arrest documentation necessary to book the prisoner.

   The arrest document(s) may include, but are not limited to:

   * SWORN COMPLAINT
   * WARRANT FOR ARREST
   * CAPIAS
   * ALIAS CAPIAS
   * CAPIAS PRO FINE
   * COMMITMENT
   * DETAINER
   * REMANDER
   * CITATION
   * TELETYPE MESSAGE (WANTED PERSON W/CONFIRMATION)

* GOVERNOR'S WARRANT
* FFJ (FUGITIVE FROM JUSTICE) WARRANT
* JUDICIAL ORDER

A prisoner will not be accepted on a photo of an arrest document unless the copy is marked as a "TRUE COPY" and affixed with the seal and/or signature of the Court Clerk or Magistrate. If an arresting officer presents a photo copied arrest document without proper attestation, he will be immediately referred to the Booking Section Floor Control Officer (CORPORAL) or sergeant on duty who will determine the acceptability of the document.

The Booking Section In-Take Officer (Desk Driver) will additionally check the arresting officer's documentation for the following:

* PRISONER'S NAME AND DATE OF BIRTH APPEAR ON WARRANT AND ARREST CARD.
* THE OFFENSE FOR WHICH THE PRISONER WAS ARRESTED APPEARS ON WARRANT AND THE ARREST CARD. NOTE: IF THE CHARGE COULD EITHER BE A FELONY OR MISDEMEANOR, INSURE THE ARRESTING OFFICER HAS INDICATED THE LEVEL OF THE OFFENSE ON ALL ARREST DOCUMENTATION.
* CHECK FOR THE ARRESTING OFFICER'S SIGNATURE AND COMPLETION OF THE RETURN ON THE ARREST WARRANT.
* CHECK FOR A MAGISTRATE'S SIGNATURE AND ORIGINATING COURT IN THE APPROPRIATE BLOCKS. THE BOND SET BY A MAGISTRATE (IF ANY) SHOULD APPEAR ON THE

ARREST WARRANT, AND/OR THE FINE SET (IF ANY).

All information appearing on the arrest documentation should match the information on the arrest card. The arresting officer will correct any discrepancies noted.

3. If the prisoner appears to be a juvenile, the In-Take Officer (Desk Driver) will ask the prisoner to confirm his/her date of birth information. If the prisoner indicates he/she is a juvenile, check with the Booking Floor Control Officer (CORPORAL) or Sergeant on duty before accepting the prisoner. The juvenile prisoner will be kept away from the SIGHT and SOUND of adult prisoner.

4. If an arrest warrant was issued by a Municipal Court Magistrate, the In-Take Officer (Desk Driver) will assign a warrant number from the Municipal Warrants Log Book located in the Booking Section. This warrant number must be affixed to the arrest warrant and Probable Cause (PC) Affidavit. The original (white copy) of the Probable Cause (PC) Affidavit is placed into the basket designated for this paperwork. The remaining copies of the Probable Cause (PC) Affidavits will be returned to the arresting officer. The arrest warrant will be forwarded to the Records Section to enter the subject in the computer and assign a booking number.

5. El Paso Police Department officers must submit a Number One Complaint Report or have an El Paso Police Department case number affixed to the arrest card. El Paso Police Department officers who are booking prisoners on Citations must present a copy or photocopy of each Citation and a Sworn Complaint for each Citation.

6. After the prisoner has been searched, all property and money receipted, and the arresting documentation has been found to be in order, the In-Take Officer (Desk Driver) will release the arresting officer and accept the prisoner. THE ARRESTING OFFICER WILL NOT BE RELEASED IF ANY DISCREPANCIES ARE NOTED AND UNTIL THEY ARE CORRECTED!

STEP 4 – Prisoner Booking Information Log

1. Once accepted, the prisoner's right hand finger and thumb prints will be affixed on the back of the arrest card submitted. The Search Officer or In-Take Officer will also note the time he/she accepted the prisoner in the upper left corner of the arrest card and initial his entry. (If for any reason the prisoner's right hand is injured or the fingerprints are inaccessible for any reason, the

* * *

No. 97-195

Supreme Court, U.S.
FILED
SEP 2 1997
CLERK

In The

Supreme Court of the United States

October Term, 1996

JESUS MIRANDA,

Petitioner,

vs.

CITY OF EL PASO, TEXAS; EL PASO POLICE DEPARTMENT; EL PASO COUNTY, and SHERIFF LEO SAMANIEGO, Individually and in his official capacity as the SHERIFF OF EL PASO COUNTY, TEXAS,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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17 pp

PARTIES TO THE PROCEEDING

The petition accurately lists the parties to the Proceeding.

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following persons have an interest in the outcome of the case. These representations are made so that the judges of this Court may evaluate possible disqualification or recusal.

Petitioner:

Jesus Miranda

Petitioner's Counsel:

Robert J. Perez

Respondent:

Leo Samaniego, Sheriff of El Paso County

Respondent:

El Paso County

Respondents' Counsel:

Jose R. Rodriquez
El Paso County Attorney

Eduardo R. Castillo
Assistant County Attorney
El Paso County

Hugh Emerson Coleman
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STATEMENT OF FACTS

The facts are undisputed. In the early morning hours of May 3, 1992, Petitioner, Jesus Miranda, was observed by George Sibley and Arturo Ruiz, members of the El Paso Police Department-Vice Squad Unit, picking up a known transvestite prostitute. (ROA Vol. II, 192-194). The Petitioner, in a pick-up truck, was then observed driving with the transvestite prostitute into an alley way. (ROA Vol. II, 194-196 and Vol. II, 211-212). The police officers approached the vehicle and found the Petitioner and the transvestite prostitute in the back of the pick-up, in a compromising position. (ROA Vol. II, 199-201). Upon further investigation of what they believed to be illegal conduct, Sibley and Ruiz requested identification of the transvestite prostitute and the Petitioner. (ROA Vol. II 203-205). When the Petitioner was asked for his I.D. he failed to produce any type of valid identification. (ROA Vol. II, 205). Petitioner, then identified himself verbally, and when the arresting officers ran a computer check on the information provided by Petitioner, the officers were informed that the Petitioner had an outstanding warrant for his arrest. (ROA Vol. 215-216). Petitioner was placed under arrest by Sibley and Ruiz and transported to an El Paso Police Department Substation. (ROA Vol. II, 216). El Paso Police Officer James Price transported Petitioner to the El Paso County Detention Facility for booking on the outstanding warrant. (ROA Vol. I, 96-97). At this point Officer Price also placed the Petitioner under arrest for two sealed indictments stemming from charges of delivery of a controlled substance. (ROA Vol. I, 97-98). The indictments were issued for an individual named Jesus Miranda. (ROA Vol. I, 166-167). There was no further information contained on the indictments. (ROA Vol. I. 166-167). On May 4, 1992, the day after the arrest of Petitioner, it was discovered that the Jesus Miranda listed on the sealed indictment was not the Petitioner. (ROA Vol. II, 220-221). These charges were then promptly dismissed as to him. (ROA Vol. II,

220-221). Petitioner then pled guilty to the outstanding warrant for which he was initially arrested and sentenced to time served and released. (ROA Vol. II, 221-225). Two years later, Petitioner filed suit claiming that he was sexually assaulted while incarcerated. At no time during his incarceration did Petitioner make an outcry that he had been assaulted. (ROA Vol. II, 239). Respondents were not even notified until two years later at the time that Petitioner filed suit of his alleged assault. (ROA Vol. II, 239).

LOWER COURT PROCEEDINGS

Petitioner filed his original petition on April 29, 1994 in the County Court at Law Number Four, in the County of El Paso. (ROA Vol. II, 393). Petitioner's suit was filed against the City of El Paso, Texas, the El Paso Police Department, El Paso Police Officer's Arturo Ruiz and George Sibley, the County of El Paso and Leo Samaniego, Sheriff of El Paso County, in his official and individual capacity. (ROA Vol. II, 393). Petitioner's original Petition alleged violation of his Constitutional rights under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution. (ROA Vol. II, 393-408). Petitioner further alleged causes of action for false arrest, false imprisonment, and negligence under the Texas Tort Claims Act. (ROA Vol. II, 393-408). Respondents filed their Petition for Removal on May 25, 1994, seeking to remove this lawsuit to the United States District Court for the Western District of Texas. (ROA Vol. II, 386-392). On October 20, 1994, Petitioner filed a Motion to Dismiss El Paso Police Department Officers Sibley and Ruiz. (ROA Vol. II, 348-350). The District Court entered an Order Dismissing Police Officers Sibley and Ruiz on October 24, 1994. (ROA Vol. II, 345-346). After proceeding with discovery, Respondents filed their Motion for Summary Judgment on July 14, 1995. (ROA Vol. II, 169-279). Petitioner filed his response on September 15, 1995. (ROA Vol. I, 81-167). Respondents filed

their Reply to Petitioner's Opposition to Respondents' Motion for Summary Judgment on October 10, 1995. (ROA Vol. I, 75-80). Petitioner filed his Supplemental Response to Respondents' Motion for Summary Judgment on October 23, 1995. (ROA Vol. I, 58-74). Respondents filed their Supplement to Motion for Summary Judgment on November 17, 1995. (ROA Vol. I, 46-52). Respondents filed their Objections to Petitioner's Supplemental Response to Respondents' Motion for Summary Judgment on November 17, 1995. (ROA Vol. I, 42-45). A hearing on Respondents' Motion for Summary Judgment was held on November 20, 1995. Petitioner filed his Supplemental Exhibits in Support of Petitioner's Opposition to Summary Judgment on November 21, 1995. (ROA Vol. I, 23-41). On November 30, 1995 the Honorable Royal Ferguson signed the Order Granting Respondents Motion for Summary Judgment on all claims asserted by Petitioner. (ROA Vol. I, 4-18). The Order was filed on December 4, 1995. (ROA Vol. I, 4-18). Petitioner filed his Supplemental Exhibits in Support of Petitioner's Opposition to Summary Judgment on December 4, 1995. (ROA Vol. I, 19-22). Petitioner filed his Notice of Appeal on January 3, 1996. (ROA Vol. I, 1-2). Opinion and Judgment were rendered in favor of Respondents on March 27, 1997 and Petitioner's Petition for Rehearing was denied on April 28, 1997.

STATEMENT OF THE CASE

Petitioner seeks review of the opinion and judgment of the United States Court of Appeals for the Fifth Circuit in Cause No. 96-50012, 111 F.3d 893 (5th Cir. 1997), styled *Jesus Miranda v. El Paso County, Texas; Leo Samaniego, Sheriff, Individually and in his official Capacity as the Sheriff of El Paso County, Texas* under the premise that the Court so far departed from the accepted and usual course of judicial proceedings by sanctioning the summary judgment entered by the trial court when there were clear issues of fact to be decided. Additionally,

Petitioner seeks reconsideration of this Court's Decision in *Baker v. McCollan*, 443 U.S. 137, 61 L. Ed. 2d 433, 99 S. Ct. 2689 (1979). As detailed below, there is no cause for this Court's review.

A. The Petition For Writ Of Certiorari Misrepresents Statements Allegedly Made By Officers Of The El Paso County Sheriff's Department.

In furtherance of his assertion that the Court of Appeals so far departed from the accepted and usual course of judicial proceedings by sanctioning the summary judgment entered by the trial court when there were clear issues of fact to be decided, Petitioner misrepresents statements listed in his petition. On pages 3 and 4 petitioner implies that the statements given are statements by a Sheriff's Department Officer. They are in fact statements which are attributed to an unidentified Sheriff's Department Sergeant as related by Petitioner in his deposition. In the record of this cause there are no depositions or sworn statements made by an officer of the El Paso Sheriff's Department which substantiates this testimony and therefore could not be considered by either the trial court or the Court of Appeals.

B. The Petition For Writ Of Certiorari Misrepresents The Admissibility Of Statements Made By The Jail Magistrate Scott Segal.

Petitioner in his Petition for Writ of Certiorari misrepresents to this Court that the affidavit of Jail Magistrate Scott Segal was admissible summary judgment evidence. Pursuant to the Federal Rules of Civil Procedure affidavits filed in support of a non-movant's response to a motion for summary judgment should be made on personal knowledge and set forth facts which would be admissible into evidence. Fed. R. Civ. P. 56(e). Segal's

affidavit plainly asserts facts of which he has no personal knowledge and which therefore would not be admissible. *Williamson v. U.S. Dept. of Agriculture*, 815 F.2d 368, 383 (5th Cir. 1987); Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d Sec. 2738. As such, Petitioner is misdirecting this Court to consider evidence which was determined to be inadmissible by the fact finding trial court. *See opinion of the trial court*, Petitioner's Petition for Writ of Certiorari App. 13. Lastly, this inadmissibility issue is not before the Court.

C. The Petition For Writ Of Certiorari Misleads This Court In Failing To State That Petitioner Was Arrested Pursuant To A Valid Arrest Warrant.

In his petition seeking writ Petitioner fails to point out the crucial fact that Petitioner was arrested pursuant to a valid arrest warrant. Petitioner was arrested on three separate warrants. The first warrant was the one identified by the arresting officers when they conducted a field investigation. Petitioner pled guilty to the offense contained in this initial warrant and the time he spent in the El Paso County Detention Facility served to satisfy his sentence for this conviction. Petitioner has not challenged the validity of this warrant or of the conviction and sentence for the offense contained in this warrant. As such, the trial court's order granting Defendants' Motion for Summary Judgment was proper based on the fact that Petitioner was arrested, convicted and confined on a valid arrest warrant. *Baker v. McCollan*, 443 U.S.137, 99 S. Ct. 2689 (1979). *See also Albright v. Oliver*, 510 U.S. 266, 114 S. Ct. 807 (1994).

REASONS FOR DENYING THE WRIT

I.

THIS COURT SHOULD NOT RECONSIDER ITS DECISION IN *BAKER v. McCOLLAN*, 443 U.S. 137, 99 S. Ct. 2689 (1979).

The constitution does not guarantee that only guilty persons will be arrested. *Baker v. McCollan*, 443 U.S. 137, 145 (1979). If it did, section 1983 would provide a cause of action for every defendant acquitted or every suspect released. *Id.* "Due process does not require that every conceivable step be taken, at whatever cost, to eliminate the possibility of convicting an innocent person". *Baker* quoting *Patterson v. New York*, 432 U.S. 197, 208 (1977).

Petitioner, in his petition for writ, suggests that this Court's decision in *Baker* should be reconsidered in light of the facts of this case. He opines that the Court's decision in *Baker* does not provide clear guidance in the determination of whether a person arrested pursuant to a valid arrest warrant and then later released should be able to sue for an alleged violation of his constitutional rights. These suggestions, however, are clearly unfounded.

In *Baker* this Court was very clear in stating that an official charged with maintaining custody of the accused named in the warrant is not required to conduct an error free investigation of every such a claim. *Id.* Given the requirements that an arrest be made only on probable cause and that one detained be accorded a speedy trial, a peace officer executing an arrest warrant is not required by the constitution to independently investigate every claim of innocence, whether the claim is based on mistaken identity or other such defense. *Id.* The Court has already considered and rejected arguments made by Petitioner in stating

that "in view of the substantive analysis employed by the dissent, it would seem virtually impossible to reach a conclusion other than that any case of misidentification in connection with an arrest made pursuant to an admittedly valid warrant or concededly on probable cause would constitute a depravation of liberty with due process of law". *Baker* at 146. In other words, if this Court were to take Petitioner's perspective the flood gates of litigation would open with every arrested person claiming that they were misidentified and then subsequently requesting a check from the law enforcement agency who arrested them. Therefore, for these reasons, it is clear that the *Baker* case should not be reconsidered.

II.

THE PETITIONER'S FACT BOUND CLAIM THAT THE COURT OF APPEALS "SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY SANCTIONING THE SUMMARY JUDGMENT ENTERED BY THE TRIAL COURT WHEN THERE WERE CLEAR ISSUES OF FACT TO BE DECIDED" DOES NOT WARRANT REVIEW BY THIS COURT.

The application of law by the Court of Appeals was not a departure from the accepted and usual course of judicial proceedings. "Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.' " *Celotex Corp. v. Catrell*, 477 U.S. 317, 327, 106 S. Ct. 2548, 2555 (1986). Further, summary judgment, "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine

issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *see Hansen v. Continental Ins. Co.*, 940 F.2d 971, 975 (5th Cir. 1991); *Hogue v. Royse City*, 939 F.2d 1249, 1252 (5th Cir. 1991). When a motion for summary judgment is made and supported as provided by Fed. R. Civ. R. 56(e) an adverse party may not rest upon the mere allegations or denials but should instead set forth specific facts showing that there is a genuine issue for trial. *Duplantis v. Shell Offshore, Inc.*, 948 F.2d 187, 190-191 (5th Cir. 1991).

This Court's 1986 trilogy of summary judgment cases clarified the test for summary judgment. In the first case of the trilogy, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505 (1986), this Court stated that the trial court must consider the substantive burden of proof imposed on the party making the claim. A plaintiff has the burden with respect to each of his or her claims and a defendant has the burden with respect to his or her defenses and claims for affirmative relief. Therefore, *Anderson* requires the trial court to substantively evaluate the evidence offered by the moving and nonmoving parties. "[T]he requirement is that there be no *genuine* issue of *material* fact." *Id.* U.S. at 248 (emphasis in original). A dispute is "genuine" "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Id.* A material fact is that which would affect the outcome of a lawsuit under the governing substantive law. *Id.* "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Id.*

In the second case of the trilogy, *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348 (1986), this Court reiterated the requirement that once the party moving for summary judgment has made a prima facie showing there is no genuine issue as to any material fact, the

nonmoving party must then come forward with "specific facts" showing a genuine issue for trial. "Its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." *Id.* at 586. The burden shifts to the nonmoving party to produce evidence in support of its claims. "The nonmovant can satisfy its burden by tendering depositions, affidavits, and other competent evidence to buttress its claim." *Topalian v. Ehrman*, 954 F.2d 1125, 1132 (5th Cir. 1992). The nonmovant cannot establish a fact issue by resting on the mere allegations of the pleadings. "In fact, unsupported allegations or affidavits setting forth ultimate or conclusive facts and conclusion of law' are insufficient to either support or defeat a motion for summary judgment." *Galindo v. Precision Am. Corp.*, 754 F.2d 1212, 1216 (5th Cir. 1985).

In the third case of the trilogy, *Celotex Corp. v. Catrell*, 477 U.S. 317, 106 S. Ct. 2548 (1986), this Court held that when the moving party shows the opposing party is unable to produce the evidence in support of its case, summary judgment is appropriate. The entry of summary judgment is mandated "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case and upon which that party will bear the burden of proof at trial." *Kidd v. Southwest Airlines, Co.*, 891 F.2d 540, 547 (5th Cir. 1990) (quoting *Celotex Corp.*, 477 U.S. at 318). In *Celotex Corp.*, it was not necessary for the motion for summary judgment to be supported by affidavits or other materials specifically negating the nonmoving party's claim so long as the District Court was satisfied of the absence of evidence to support it. The standard is not merely whether there is a sufficient factual dispute to permit the case to go forward, but whether a rational trier of fact could find for the non-moving party based upon the record evidence before the court. *James v. Sadler*, 909 F.2d 834, 837 (5th Cir. 1990).

As shown above, this court has given very clear direction in the granting of a summary judgment by a trial court. In the case at hand, however, Petitioner suggests that Court of Appeals erred in affirming the trial court in ruling that Petitioner failed to present evidence sufficient to establish a constitutional violation in contradiction of the above state case law. This is unfounded. In its ruling, the Court of Appeals relied on *Colle v. Brazos County*, 981 F.2d 237 (5th Cir. 1993). The *Colle* case plainly states that mere allegations are not enough to sustain a 42 U.S.C. § 1983 case. *Colle* at 244. A section 1983 plaintiff must be able to demonstrate a policy or custom which caused the alleged constitutional deprivation. *Id.* Further, courts have consistently "require(d) the claimant to state specific facts, not merely conclusive allegations." *Colle* quoting *Elliott v. Perez*, 751 F.2d at 1479.

In seeking review of this case, Petitioner seeks to have this Court rewrite the entire body of case law in regards to the standard for granting a summary judgment as cited above. This is evidenced by how Petitioner insists that this court consider statements which have been decided to be unacceptable summary judgment evidence. In other words, Petitioner wishes this Court to rule in the face of volumous case law, that mere allegations are sufficient to defeat a properly supported motion for summary judgment. This challenges settled law, sound policy and does not merit this Court's review.

CONCLUSION

For the reasons given above, Jesus Miranda's Petition for Writ of Certiorari, should be denied.

Respectfully submitted,

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